IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9231 OF 2003

Smt.Shantidevi Kamaleshkumar
Yadav, Adult Indian
Inhabitant, residing at
12, Azad Lane, Lalji Road,
Kandivali (W)
Mumbai .. Petitioner

Vs

1. State of Maharashtra
through its Department of
Social Welfare, Mantralaya,
Mumbai ..

2. Municipal Corporation of
Greater Mumbai
Mahapalika Marg
Mumbai 400 001. ..

3. The Municipal Commissioner
The Municipal Corporation of
Greater Mumbai having its
office at Mahapalika Building,
Mahapalika Marg,
Mumbai 400 001. ..

4. The Deputy Municipal
Commissioner, having his office
at Room No.28, Election Office,
Old Building, Municipal
Corporation of Greater Mumbai
Mahapalika Marg
Mumbai 400 001. ..

5. The Caste Certificate
Scrutiny Committee having
its office at Konkan Bhavan
Navi Mumbai, Dist.Thane ..

6. The State Election Commission
having its office at Mantralaya
Mumbai ..

7. The Collector, Mumbai
having his office at Old Custom
House, Shahid Bhagatsing Marg,
Mumbai 400 023 ..

8. The Executive Magistrate
& Tahsildar for the City of

Greater Mumbai, having his
office at Old Custom House
Shahid Bhagatsing Marg
Mumbai 400 023 ..

9. Shri Rajan Yadav
Residing at Moti Yadav
Chawl, Abhilakh Nagar
Kandivali (W),
Mumbai 400 067 ..

10. Mr.Sheikh Fateh
Mohammed Razah
R/o.Sharif Mansuri Chawl
Gandhi Nagar, Opp.Petrol
Pump, Kandivli (W)
Mumbai 400 067 ..

11. Mr.Hemendra Mehta, MLA
Factory Lane,
Near Ambamata Mandir
Borivli (W),
Mumbai 400 092 ..

12. Smt.Indravati Rajan Yadav
Moti Yadav Chawl
Abhilakh Nagar,
Kandivali (W),
Mumbai 400 067 .. Respondents

Shri Y.S.Jahagirdhar, senior with Mr.V.M.Thorat and Mr.P.N.Patil for the petitioners.

Shri R.K.Mendadkar for respondent no.9.

Shri C.R.Sonawane AGP for respondent nos.1, 5, 7 and 8.

Ms.B.D'souza with Mr.M.P.Vashi with Mr.A.R.Misra for respondent no.10.

Mr.R.V.More with Mr.S.Dheple for respondent no.6.

Mr.R.J.Bhor for respondent nos.2 to 4.

CORAM : V.G.PALSHIKAR &
D.B.BHOSALE, JJ.
DATED : 14TH OCTOBER 2005.

ORAL JUDGMENT (PER V.G.PALSHIKAR, J.)

. By this petition, the petitioner has challenged the order dated 21st November, 2003 passed by the Caste Scrutiny Committee invalidating the caste certificate given to the petitioner by the appropriate authority. According to the petitioner, this order is liable to be quashed on the following grounds: (1) The order suffers from violation of principles of natural justice inasmuch as the documents relied upon were not confronted to the petitioner and the petitioner was not given opportunity to meet those documents; (2) The entire order as will be disclosed from the operative part rests on issue no.1, namely, issuance of the certificate by a person not competent and, therefore, there is non application of mind by the committee to the evidence on record, on the basis of which only conclusion regarding the petitioner belonging to caste - Yadav or not can be drawn; (3) The entire order of the committed is vitiated because the enquiry conducted by the vigilance cell is not as per law and the directions issued by the Supreme Court of India are violated. They did not conduct enquiry as contemplated by the guidelines and, therefore, substantial injustice is caused to the petitioner by inadequate enquiry by the vigilance cell. When the matter was argued on earlier occasions the statement

was made on behalf of the petitioner that the petitioner does not press prayer clause (a-i) to (a-iv) and consequently only the above mentioned contentions were canvassed. Taking into consideration these submissions it is contended that the impugned order is liable to be set aside and matter is remitted back to the committee to decide it properly on appreciation of entire evidence as it exists on record.

2. These submissions are resisted by the counsel for the State and other contesting respondents by placing the observations made in the impugned order and pointing out that none of the defects as contended by the petitioner exists in the impugned order. They, therefore, prayed that the impugned order be confirmed.

3. We will consider the submissions made by the learned counsel appearing on behalf of the petitioner by scrutinising the impugned order. It is, however, necessary to keep in mind the basic limits of jurisdiction which a writ court has in considering challenge to order passed by the competent tribunal. It is accepted principle of law that in writ jurisdiction a writ court does not function as the appellate court to reappreciate and reassess the

evidence as is done by the tribunal enjoined with the duty to appreciate evidence. Interference by a writ court is possible in very limited situation. It is possible if the order passed by the competent tribunal is based on no evidence. It is possible that the conclusions drawn by the tribunal on evidence before it are perverse and illegal. It is possible if the conclusion are illegal and result in grave injustice to the person concerned. It is in the light of these accepted principle that we have to consider the contentions raised on behalf of the petitioner.

4. The first contention pertains to violation of principles of natural justice. A perusal of the impugned order nullifies this submission. It is important to note in the instant case that the petitioner who claims to be backward class candidate was duly represented by the advocate before the committee and the scrutiny committee has observed in its order as under:

> ".... .... After the Police Inspector, Vigilance Squad, Ja.Pra.Padhye 98(?) Inquiry report was received on the date 12.4.03, in the meeting of the C.C.V. Committee held on the date 24.4.03, said Inquiry Report was perused. There was a detailed discussion on the same. A copy of said Inquiry Report and copy of letter dt.8th April 03, of the office of the Collector, Bombay City, are given to Smt.Shantidevi and to the complainant and the next date of hearing was given as 2.5.03."

5. The committee then goes on to observe what happened in the proceedings on 2nd May, 2003. On that day a copy of letter of the respondent - Deputy Collector was given to the petitioner and her say was solicited. The committee then specifically observes that in that regard neither she i.e. the petitioner nor her advocate could give proper answer. By that letter, to which there was no answer by the petitioner, the respondent - Deputy Collector communicated to the committee that such certificate as is claimed by the petitioner was not issued by the office of the Collector. Thereafter the advocate of the petitioner requested the committee to give date to put forward the arguments which was objected by the complainant. The committee then observes, however, in view of principles of natural justice, the committee decided to give them the last opportunity and fixed the next date of hearing on 9.5.03. On 9.5.03 there was no hearing and, therefore, it was adjourned to 13.5.03. On 13.5.03 the advocate for the petitioner remained present and produced certain papers which were taken on record and then hearing was closed. It will thus be seen that the principles of natural justice were duly observed by the committee while dealing with validation claim of the petitioner.

6. Then the committee goes on to note that the documents tendered by the petitioner before it, serially they are noticed. The committee also noticed that school leaving certificate bearing No.39017 dt.31.8.77 showed the caste of certificate holder as 'Hindu'. Then another certificate at serial no.8 was considered where the caste of certificate holder was considered as 'Hindu Yadav'. At serial no.9 another application of the petitioner was examined to show that the caste mentioned was 'Hindu Yadav' (Ahir). At serial no.11 the committee noted the school leaving certificate bearing no.753 issued to the husband of the petitioner wherein his caste is shown as 'Ahir'. At serial no.17 the committee considered school leaving certificate of the brother of the petitioner wherein the caste is mentioned as 'Hindu' (Yadav). Then at item no.18 school leaving certificate of another candidate is considered wherein the caste is shown as 'Hindu' only.

7. Then the committee notes that on the basis of the documents examined by the committee the police inspector, Vigilance Squad submitted his inquiry report to the committee on 12.4.03. The committee then considered the report of Vigilance commission

and noticed objection of the Vigilance Inspector that when interviewed by the Inspector, the petitioner could not name the area where the school she had attended is located. Then the committee notes the submission of the petitioner in relation to two certificates. The petitioner state in her statement that the name of the school is Ramkrishna Vidyalaya and when her papers were submitted in the Municipal Corporation someone must have changed her school leaving certificate and must have put school leaving certificate of Ramsevak school. The case of the petitioner candidly submitted before the committee was that the certificate of Ramsevak school found on the record was substituted by someone and was not the claim of the petitioner. However, now it is sought to be alleged that she belongs to Ramsevak school and no inquiry was made in respect of Ramsevak school.

8. Then the committee goes on to examine the certificates as produced by the petitioner. Then the committee notes the documentary evidence in details, serially, by observing that the documentary evidence received from the petitioner, the complainant as well as the Police Vigilance Squad are as under; then all the documents are taken, the entry of caste in those documents is noted. In some it is ‘Yadav’, in some it is ‘Hindu’ and in some it is ‘Ahir’. Several

documents pertains to assessment of tax where the name of the petitioner is mentioned. The committee then at serial no.17 considered the birth certificate issued to the father of the petitioner. In this certificate there is no mention of caste either of the father or child. At item no.22 is certificate of the petitioner's husband whose caste is shown as 'Ahir'. Then there are several letters addressed either by the petitioner or by her advocate. Then the committee observed from the documents submitted by candidate Smt.Shantidevi Yadav, the complainant as well as the Police Vigilance Squad the following points arise: (1) Whether the candidate Smt.Shantidevi Yadav has obtained the caste certificate from the competent authority ? (2) Whether Smt.Shantidevi belongs to the caste for which she has obtained the caste certificate ? Then the tribunal proceeds to consider all further aspects in this regard. Then ultimately it is observed that the committee considered all the evidence/documents submitted by Smt.Yadav and since the committee is fully satisfied that detail inquiry is held in the matter and since she has not taken the caste certificate from the competent authority the committee has given the decision. From the aforesaid discussion it is obvious that there was no violation of the principles of natural justice. This

consideration of the order, of caste scrutiny committee, as done by us further nullifies the two other contentions raised by the learned counsel on behalf of the petitioner, namely, that the entire order is based only on issue no.1 regarding issuance of certificate and there is no issuance of certificate by a person not competent. We have pointed out in details various evidence on record, its appreciation by the tribunal. We agree that the conclusion reached by the tribunal is proper. In our opinion it cannot be said that the order passed by the committee was on no evidence. From the evidence discussed above it is further clear that there has been proper appreciation of evidence on record by the committee.

9. The submission that Vigilance cell did not conduct the inquiry properly is also not tenable in the light of the observations made by us in foregoing paragraphs wherein there is careful consideration of the entire report of the Vigilance cell.

10. In order to substantitate this submission the learned counsel for the petitioner relied on several judgments of this court as also of the Supreme Court of India. As is usual in the cases of caste certificate, heavy reliance was placed on the

judgment in **Kumari Madhuri Patil and Anr. Vs. Additional Commissioner, Tribal Development and Others AIR 1995 SC 94**. Reliance was placed on this judgment to point out the guidelines and that there is violation of the guidelines and, therefore, the proceedings are vitiated. Our attention was drawn to the guideline no.5 in paragraph 12 of the judgment which pertains to constitution of vigilance cell. It speaks of constitution of cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides and make inquiry. The contention was that the Inspector did not go to the school where it is located but only called for the correspondence by letter. The observation of the committee in this regard are telling that before the Vigilance committee when the statement of the petitioner was recorded she was unable to state the area to which her school belong, the name of the school in which she studied. Consequently, there was no material for the committee for going to the school apart from that from the alleged document when certain clauses were mentioned, queries were made and result was put in vigilance squad report. There is, therefore, no substance in

the contention that the guidelines given by the Supreme Court of India were not observed.

11. Reliance was then placed on another judgment of the Supreme Court reported in **1996 (Mh.L.J.) Page 402** in **Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and Others**. This judgment very clearly lays down in paragraph 18 that undoubtedly, the burden heavily lies on the applicant for evaluation of the certificate who seeks such certificate. The burden was, therefore, on the present pettiioner that caste certificate tendered by her is valid and it was tendered in support of that claim. True it is that the committee is also required to look into objective actively and our discussion goes to show that how the duty was performed by the committee. Consequently, this judgment is of no use to the petitioner.

12. Reliance was thereafter placed on the judgment of this Court in **2005(3) Mh.L.J. 1161 Satish Limbraj Adatrao Vs. State of Maharashtra and Ors**. in which the order passed by the caste scrutiny committee was set aside and the matter was remanded to the committee to make proper inquiry. The following observations of the Division Bench are required to be noted:

"This judgment nowhere says that an

> opportunity after establishment of vigilance cell should not be given. In view of the fact alleged by the petitioners by separate civil application that now they are in their possession certain evidence which may favourably help validation of their caste claims. In our opinion this judgment has no impediment in setting aside the order of the caste scrutiny committee."

13 The Division Bench then proceeded to set aside the order by observing that the order being set aside the set up of vigilance cell gives a broader perspective for verification. In the present case though the proper prespective was availed by the petitioner and the vigilance squad had conducted proper inquiry into entire circumstances. This judgment is also of no help to the petitioner. It will thus be seen that the impugned order is legal and valid. The conclusion are properly reached. The evidence is properly appreciated. There is no perversity in the finding recorded neither there is no consideration of evidence on record. In such circumstances no interference is called for. The petition fails and is dismissed as such. The interim orders, if any, are vacated.

(D.B.Bhosale, J.) **(V.G.Palshikar, J.)**

Reported